A.F.R.

(LB)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA

Criminal Appeal No.1193 of 2001

Nanu Ram Tawar,

Versus

State of Chhattisgarh

JUDGMENT

POST FOR 30 - 8-2005

Sd/-
V.K.Shrivastava
Judge

(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1193 of 2001

Appellant **(In Jail Custody)**	:	**Nanu Ram Tawar,** S/o Mange Lal Tawar Thakur, aged about 22 years, R/o Village Khardanta, P.S. Balta, District Jalabad, Rajasthan
	Versus	
Respondent	:	**State of Chhattisgarh,** Through P.S. Civil Line, Raipur, District Raipur, Chhattisgarh

Mr. S.C.Verma, counsel for the appellant.
Mr. J.D.Bajpai, Additional Public Prosecutor for the respondent/State.

JUDGMENT

(Delivered on 30 -9-2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment of conviction and order of sentence dated 16-10-2001 passed by Special Judge, Raipur in Special Criminal Case No.93/99, whereby convicting the appellant for committing an offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act') and sentencing the appellant to undergo R.I. for 10 years and to pay a fine of Rs.1 Lakh, in default of payment of fine to undergo additional R.I. for 1 year.

2. On 12-10-1999 in the midnight around 2.45 A.M., a report was received in Police Station Civil Line, Raipur that some persons have entered a house in Shankar Nagar Khamhardih and are assaulting the inhabitants. On receiving the said information, Sub-Inspector Rajesh Tiwari, after making entry in the daily diary accompanied with other Police Staff proceeded for the spot. When Rajesh Tiwari was investigating the incident, he received further information from an informer that four persons having airbags in their possession are sitting behind bus stand, where some construction has been done and they have in their possession drugs. Rajesh Tiwari recorded a Panchnama and sent the same to City Superintendent of Police, Civil Line, Raipur. He called witnesses Sadik Ali and Awadhesh Mishra and accompanied with these witnesses and staff went to the spot. He found the appellant sitting with his other companions. All of them have their airbags. The appellant was given information that Police has received information that he is in possession of drugs and the appellant was also informed that if he desires his search can be made by any Gazetted Officer or Magistrate, but the appellant gave his consent for search by Sub-Inspector Rajesh Tiwari himself. The consent was recorded and in presence of witnesses, after necessary formalities, the bag in possession of the appellant was searched. On search, 2 Kilograms Opium was found. Out of that Opium, two samples of 25 Grams each for chemical examination have been prepared. All the Opium recovered was seized. The appellant was arrested. Panchnama was prepared on the spot. Dehati Nalisi and F.I.R. was recorded, seized property was kept under custody in Malkhana after necessary entries in the Property Register. Samples have been sent to F.S.L., Sagar for examination, who after examination gave opinion

that the seized property is impure coagulated juice of opium poppy having 4.28% morphine therein. After completion of the investigation, the charge-sheet has been filed in the Court of Special Judge for trial.

3. Charge under Section 18 of the Act has been framed against the appellant. Charge was read over and explained to him, who abjured his guilt. The appellant's defence is that he is innocent. He has been falsely implicated in this case.

4. Learned trial Court, after evaluating the evidence adduced by the prosecution, held that the appellant was found in possession of 2 Kilograms illicit Opium and thereby committed an offence punishable under Section 18 of the Act and hence the appellant was sentenced.

5. Both the parties are heard. Record of trial Court is perused.

6. The appellant's contention is that independent witnesses Syed Sadik Ali, P.W.-6 and Awadhesh Mishra, P.W.-7, were turned hostile and both the witnesses did not support the prosecution case, therefore, the only statement of Rajesh Tiwari, P.W.-8, who is a Police Officer cannot be relied on for convicting the appellant. On the other hand, learned counsel for the respondent/State contended that though Rajesh Tiwari is a Police Officer, his evidence, however, if otherwise acceptable to be true, cannot be discarded merely on the ground of his being a Police Officer.

(52)

7. Hon'ble the Apex Court in the matter of **Karamjit Singh vs. State (Delhi Administration), reported in (2003) 5 SCC 291** has held that the testimony of Police Personnel should be treated in the same manner as testimony of any other witnesses and their testimony could be relied upon without being corroborated by the testimony of independent witnesses. It is further held that presumption that a person acts honestly applies as much in favour of a Police Personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. Hon'ble the Apex Court in the matter of **Abdul Majid Abdul Hak Ansari vs. State of Gujarat, reported in (2003) 10 SCC 198** also held that conviction can be based on the evidence of Police Witness.

8. Rajesh Tiwari, P.W.-8, who is Station House Officer, Police Station Civil Line, Raipur, in his evidence has deposed that on 12-10-1999 in midnight at 2.45 A.M., Sub-Inspector P.K.Sahu received information from Control-Room that some persons have entered in a house in Shankar Nagar Khamhardih and are beating inhabitants, therefore, receiving this information, he accompanied with Police Staff proceeded for the spot. Necessary entries have been made in Sanha, Ex.P-18. While searching the culprit, when he reached bus stand, he received information from an informer that inside the building, under construction, behind bus stand, four persons having airbags are sitting in a suspicious condition and it is possible that they may have kept drugs, therefore, information Panchnama, Ex.P-2 has been prepared by him and he sent a copy of it to C.S.P., Vineet Khanna. He also prepared in presence of

(23)

witnesses Ex.P-15 information Panchnama. He further deposed that he called witnesses Sadik Ali and Awadhesh Mishra and accompanied with these witnesses and staff reached the spot, where the appellant accompanied with his three companions was found. All those persons had airbags. He gave information to the appellant that he has received information regarding possession of drugs in his bag. The appellant was also given information that he is entitled to be got searched by Gazetted Officer or Magistrate but the appellant gave consent for search to be made by Rajesh Tiwari himself. The appellant was given written notice i.e. Ex.P-6 and the appellant gave his consent i.e. Ex.P-16. One of the appellant's companions Narayan recorded Ex.P/16. After obtaining consent, he and Assistant Sub-Inspector Hardeo given their search in presence of the witnesses to the appellant and a Panchnama to this effect was prepared i.e. Ex.P-7. The appellant's bag was searched and from bag Opium was recovered. That search memo was prepared i.e. Ex.P-8. Opium was got weighed and two samples of 25 Grams each were separated. Property recovered and samples were sealed. Panchnama, Ex.P-4 was prepared. Seizure memo, Ex.P-10 was also prepared. The appellant was arrested and reason behind his arrest was stated to him. All the proceedings have been recorded in a Panchnama in presence of witnesses i.e. Ex.P-13. He recorded Dehati Nalisi, Ex.P-20, seized Opium has been deposited in the Property-Room after necessary entries in Property-Register i.e. Ex.P-5. Seizure and arrest was informed to C.S.P. vide Ex.P.-3. Seized sample Opium has been sent to F.S.L., Sagar and necessary entries regarding to and fro journey performed by the Constable has been made in Sanha. Those entries are Ex.P-22, P-23 and P-24. After

chemical examination, report Ex.P-25 has been received from the F.S.L.

9. Syed Sadik Ali, P.W.-6 and Awadhesh Mishra, P.W.-7, both these witnesses are independent Panch witnesses, but both these witnesses did not support the prosecution version and have been declared hostile. Both these witnesses have admitted their signature on various documents but did not support the recitals of those documents.

10. Ex.P-2 and P-3 sent to C.S.P. were received by his Reader Kishore Soni and Kishore Soni, P.W.-2 in his evidence proved the said fact. Vineet Khanna, P.W.-5 has also proved that Ex.P-2 and P-3 have been received by his Reader, who submitted both these documents before him. Vineet Khanna, P.W.-5 is C.S.P. Mona Madasi, P.W.-3 in his statement proved the fact that he weighed the seized article and also two sample bags of 25 Grams each and also proved the weighing Panchnama, Ex.P-4. Ramgopal Sharma, P.W.-1 vide his statement proved the fact that he took the sealed property from Police Station to F.S.L., Sagar along with letter written by Superintendent of Police i.e. Ex.P-1. He also proved that packet was marked as 'A' and he delivered the packet on 20-10-1999 to F.S.L. Report, Ex.P-25 also establishes the fact that property received by F.S.L. was in sealed condition and the seal was tallying with the sample seal and on examination of the property, the seized property was found to be impure coagulated juice of opium poppy having 4.28% morphine therein.

11. The statement of Ramgopal Sharma, P.W.-1, Kishore Soni, P.W.-2, Mona Madasi, P.W.-3, Urmila Prasad Pandey, P.W.-4, Vineet Khanna, P.W.-5 and Rajesh Tiwari, P.W.-8 have been tested on cross-examination, but nothing substantial has been brought in their cross-examination so as to discredit their statement.

12. The appellant's defence is that he has been falsely implicated. Not an iota of evidence is there to suggest that any of the witnesses has any animus against the appellant. Why a Police Officer will falsely implicate the appellant, to explain it also, there is nothing on record. Even the appellant in his examination does not say a single word why he has been falsely implicated.

13. Although the evidence of Rajesh Tiwari, P.W.-8 did not find support from the statement of Syed Sadik Ali, P.W.-6 and Awadhesh Mishra, P.W.-7, yet on four corners his evidence has been supported by other witnesses, Ramgopal Sharma, P.W.-1, Kishore Soni, P.W.-2, Mona Madasi, P.W.-3, Urmila Prasad Pandey, P.W.-4 and Vineet Khanna, P.W.-5 so also his oral evidence is duly supported by various documents prepared regarding search and seizure and also sending information forthwith to superior officials.

14. Rajesh Tiwari, P.W.-8, an officer empowered to take search, on receiving information forthwith sent report to his superior officer, gave information to the appellant in accordance with Section 50 of the Act and also conducted search in accordance with proper procedure. All the documents have been prepared on the spot and also Dehati Nalisi was recorded. Within prescribed

period report was also sent to C.S.P. in accordance with Section 57 of the Act.

15. Learned trial Court has also very minutely evaluated the evidence adduced by the prosecution and after evaluating the evidence held that the appellant was found in possession of 2 Kilograms Opium. From the aforesaid evidence on record when the evidence of Police Officer was reliable and was not suffered from any infirmity, even no substance was brought to show that the Police Officer has any animus with the appellant or has any reason to believe that Police Officer will falsely implicated the appellant, his evidence can be acted upon without being corroborated from the independent witnesses and, therefore, the evidence of Rajesh Tiwari, P.W.-8 corroborated from other various corners and documents was credible and on his evidence it was established that the appellant was in possession of 2 Kilograms illicit Opium.

16. The finding arrived at and sentence passed by learned trial Court do not appear to be erroneous. In the result, the appeal fails. The judgment of conviction and order of sentence passed by the trial Court is maintained. Appeal dismissed.

Sd/-
V.K.Shrivastava
Judge

G. Singh